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10 UNITED STATES DISTRICT COURT

11 DISTRICT OF NEVADA

12 HOFBRÄUHAUS OF AMERICA, LLC, a Case No. 2:22-cv-00421-ART-DJA  
Nevada limited liability company,  
13 Plaintiff,  
14 v.  
15 OAK TREE MANAGEMENT SERVICES,  
INC., a Missouri corporation, WILLIAM  
GUY CROUCH, as Successor in Interest or  
Receiver for Oak Tree Management  
Services, Inc.,  
16 Defendants.  
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**ORDER APPROVING JOINT  
MOTION TO STAY ACTION TO  
EXPLORE SETTLEMENT  
RESOLUTION**

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21 Plaintiff Hofbräuhaus of America, LLC (“Hofbräuhaus America”), and Defendant  
22 William Guy Crouch, as Court-Appointed Receiver (the “Receiver”) for Oak Tree  
23 Management Services, Inc. (“Oak Tree”), by and through undersigned counsel, hereby  
24 stipulate and jointly move this Court to stay this action for eight (8) weeks while the parties  
25 explore settlement options. In support of this Stipulation, the parties respectfully state as  
26 follows:  
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1 **I. INTRODUCTION**

2 The parties to this action are presently engaged in negotiations through which they  
 3 see a reasonable possibility to resolve all disputes pending before this Court and those  
 4 recently commenced by the Receiver in Missouri State Court, and which Hofbräuhaus  
 5 America removed to the United States District Court, Eastern District of Missouri, Eastern  
 6 Division, Case No. 4:22-cv-00527-AGF (the “Missouri Action”).<sup>1</sup> Given the complicated  
 7 matters at issue in this case, a potential settlement includes a number of complex components  
 8 that require sufficient time and effort to address. The parties submit that continuing this action  
 9 and the Missouri Action during the parties’ resolution efforts would derail and distract from a  
 10 viable potential settlement.

11 The parties jointly stipulate and move for the Court to enter a limited stay of eight (8)  
 12 weeks in this action for the purpose of exploring resolution. This request is not made for the  
 13 purposes of delay, but to reduce the burden of litigation while seeking a mutually beneficial  
 14 solution. A stay would serve judicial economy and provide a fair opportunity to mitigate  
 15 damages and preserve both parties’ rights. The Court has the inherent power to grant such a  
 16 stay under terms the parties stipulate and the Court deems appropriate.

17 Accordingly, and for the reasons stated herein, the parties request this Court to enter  
 18 an order staying this action for eight (8) weeks.

19 **II. STATEMENT OF FACTS**

20 *Status of Pleadings and Motion  
 21 Practice in Nevada*

22 1. On or about March 7, 2022, Hofbräuhaus America filed its Complaint [ECF 1]  
 23 On or about March 21, 2022, Hofbräuhaus America filed its Amended Complaint [ECF 6]  
 24 asserting the following claims against the Receiver and Oak Tree: (1) Trademark Infringement  
 25 per 15 U.S.C. § 1051 et seq.; (ii) Trade Dress Infringement per 15 U.S.C. § 1051 et seq.; (iii)

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 <sup>1</sup> The parties are simultaneously filing a similar joint motion to stay in the Missouri Action.



1 Copyright Infringement per 17 U.S.C. § 101 et seq.; and (iv) Declaratory Relief per NRS §  
2 30.010 et seq.

3 2. On March 29, 2022, the Receiver filed a Motion to Dismiss, Stay or Transfer  
4 the Amended Complaint. [ECF 10]

5 3. On April 5, 2022, Hofbräuhaus America filed its Emergency Motion for  
6 Preliminary Injunction. [ECF 18]

7 4. On April 6, 2022, the Court issued a Minute Order denying Hofbräuhaus  
8 America's Emergency Hearing Request. [ECF 21]

9 5. On April 12, 2022, Hofbräuhaus America filed its Opposition to the  
10 Receiver's Motion to Dismiss, Stay or Transfer the Amended Complaint [ECF 22].

11 6. On April 26, 2022, Receiver filed his Response and Opposition to  
12 Hofbräuhaus America's Emergency Motion for Preliminary Injunction. [ECF 26]

13 7. On April 27, 2022, Receiver filed his Reply in Support of his Motion to  
14 Dismiss, Stay or transfer the Amended Complaint. [ECF 27]

15 8. On May 13, 2022, Hofbräuhaus America filed its Reply in Support of its  
16 Emergency Motion for Preliminary Injunction. [ECF 37]

17 9. On May 20, 2022, the Receiver filed a Motion for Leave to file a Sur-Reply to  
18 Hofbräuhaus America's Reply in Support of its Emergency Motion for Preliminary  
19 Injunction. [ECF 41]

20 10. On June 3, 2022, Hofbräuhaus America filed an Opposition to the Receiver's  
21 Motion for Leave to file a Sur-Reply. [ECF 44]

22 11. On May 20, 2022, the parties submitted and on May 23, 2022, the Court  
23 granted a Stipulated Discovery Plan and Scheduling Order [ECF 42] setting forth the  
24 following discovery schedule:

25 a. Discovery Cutoff Date: Monday September 26, 2022

26 b. Last Day to Amend Pleadings: Tuesday, June 28, 2022

27 c. Last Day to Disclose Expert Witnesses: Thursday, July 28, 2022

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d. Last Day to file Dispositive Motions: Wednesday, October 26, 2022

e. Date to file the joint pretrial order: Friday, November 25, 2022

3 12. The Motion to Dismiss, Stay or Transfer the Amended Complaint [ECF 10],  
4 Emergency Motion for Preliminary Injunction [ECF 18], and Motion for Leave to File a Sur-  
5 Reply [ECF 41] are fully briefed and remain pending before the Court.

### ***Status of Pleadings and Motion***

## *Status of Teaching and Practice in Missouri*

8        13.      On April 12, 2022, Receiver initiated a lawsuit entitled “Petition Adjunct to  
9      Receivership Action in Case No. 19SL-CC05405” in the Circuit Court of St. Louis County,  
10     State of Missouri as Case No. 22SL-CC02167) asserting the following claims against  
11     Hofbräuhaus America: (1) Contempt of Court Against Hofbräuhaus America for Violating the  
12     Receiver’s Order, the MCRA, and the IFDA; (2) Declaratory Judgment that Hofbräuhaus  
13     America Failed to File Claims Relating to Royalty Fees under the Franchise Agreement in the  
14     Receivership Action and Now Those Claims are Time Barred; (3) Declaratory Judgment that  
15     the Franchise Agreement was Not Lawfully Terminated; (4) Injunctive Relief preventing  
16     Hofbräuhaus America from taking any action on the Franchise Agreement to interrupt the  
17     continued use of Hofbräuhaus America’s intellectual property at the HB-Belleville Brewpub  
18     and preventing Hofbräuhaus America from maintaining any cause of action without first  
19     obtaining the approval of the Missouri State Receivership Court.

20 14. On May 13, 2022, Hofbräuhaus removed the action to federal court by filing a  
21 Notice of Removal. [Missouri ECF 1]

22       15. On May 20, 2022, Hofbräuhaus America filed a Motion to Transfer Venue  
23 and Consolidate Receiver’s Missouri Petition to Nevada Federal District Court arguing the  
24 Receiver’s claims therein are compulsory counterclaims or defenses to Hofbräuhaus  
25 America’s pending lawsuit in Nevada. [Missouri ECF 11].

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1       16. On June 13, 2022, the Receiver filed an Opposition to Hofbräuhaus America's  
 2 Motion to Transfer Venue and Consolidate Receiver's Missouri Petition to Nevada. [Missouri  
 3 ECF 19]

4       17. Also on June 13, 2022, the Receiver filed a Motion to Remand. [Missouri  
 5 ECF 20]

6       18. The Parties agreed to an extension of time for Hofbräuhaus America to file its  
 7 Reply in Support of its Motion to Transfer and Consolidate and its Opposition to Receiver's  
 8 Motion to Remand. [Missouri ECF 25, 26, 27, 28 and 29]

9       19. With the complexity of the legal issues in this matter and the fast moving,  
 10 cross-jurisdictional practice pending, both Hofbräuhaus America and the Receiver  
 11 inadvertently overlooked Local Federal Rules relating to these filings in Missouri.  
 12 Specifically, neither Hofbräuhaus America nor Receiver filed a Notice of Related Case in this  
 13 action required by Nevada Local Rule 42-1(a) when Receiver filed the Missouri Petition. In  
 14 filing its Motion to Transfer and Consolidate in the Missouri Action, Hofbräuhaus America  
 15 inadvertently overlooked Nevada Local Rule 42-1(b) and Missouri Local Rule 4.03, which  
 16 both provide the Motion to Transfer and Consolidate should be filed in the first filed case, i.e.,  
 17 in Nevada.

18 **III.     LEGAL ARGUMENT**

19       [T]he power to stay proceedings is incidental to the power inherent in every court to  
 20 control the disposition of the causes on its docket with economy of time and effort for itself,  
 21 for counsel, and for litigants." *Trees v. Serv. Emps. Int'l Union Loc.* 503, No. 6:21-CV-468-SI,  
 22 2021 WL 5829017, at \*3 (D. Or. Dec. 8, 2021) (citing *Landis v. N. Am. Co.*, 299 U.S. 248,  
 23 254, 57 S.Ct. 163, 81 L.Ed. 153 (1936)); *see also Lockyer v. Mirant Corp.*, 398 F.3d 1098,  
 24 1111 (9th Cir. 2005) (quoting *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863 (9th  
 25 Cir. 1979)).

26       In exercising this discretion, the Ninth Circuit has explained that the district court  
 27 must weigh competing interests, including the possible damage which may result from the  
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1 granting of a stay, the hardship or inequity which a party may suffer in being required to go  
 2 forward, and the orderly course of justice measured in terms of the simplifying or  
 3 complicating of issues, proof, and questions of law which could be expected to result from  
 4 a stay. *Id.* at 1110 (quoting *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962)). Courts  
 5 have acknowledged that “lengthy or indefinite” stays may create a “danger of denying justice  
 6 by delay” *Blue Cross and Blue Shield of Ala. v. Unity Outpatient Surgery Ctr., Inc.*, 490 F.3d  
 7 718, 724 (9th Cir. 2007). The “orderly course of justice” is “measured by considering  
 8 whether issues will be simplified or complicated, proof, and questions of law which could be  
 9 expected to result from the stay.” *Lockyer*, 398 F.3d at 1110 (quoting *CMAX*, 300 F.2d at  
 10 268).

11 In this case, the parties have agreed to stay all pending litigation while they attempt to  
 12 resolve their disputes through settlement negotiation. As a result, the request is limited in time  
 13 and fair to all involved. The parties’ hope is that negotiations will result in a global resolution  
 14 of all matters. Such a result would serve judicial economy for all Courts in which litigation is  
 15 pending between the parties. This is the parties’ first request of its kind and not made for any  
 16 improper purpose, including delay.

17 **IV. STIPULATION**

18 WHEREFORE, IT IS HEREBY STIPULATED by and between the parties, and the  
 19 parties hereby request that this action, including all pending motions and all deadlines in the  
 20 Stipulated Discovery Plan and Scheduling Order, shall be stayed for eight (8) weeks while the  
 21 parties explore settlement. At the conclusion of the eight (8) week stay period, the parties shall  
 22 update the Court by filing: (i) a notice of settlement or filing of a stipulation and order for  
 23 dismissal; (ii) a status report regarding the stay, which may include a request for additional  
 24 time to continue the stay to finalize settlement; or (iii) a request to resume pending matters in  
 25 this action.

26 The parties acknowledge that if settlement is not reached, they are obligated to  
 27 proceed immediately with discovery in this action, and so agree that upon conclusion of the

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1 eight (8) week stay, if resolution is not met, they will submit a new proposed Stipulated  
2 Discovery Plan and Scheduling Order setting forth new discovery deadlines for this case to  
3 proceed. In addition, if resolution is not met, Hofbräuhaus America will vacate its Motion to  
4 Transfer and Consolidate currently pending in the Missouri Action and will refile that motion  
5 in Nevada as required by both Nevada and Missouri's Local Rules. Lastly, the parties will  
6 submit a stipulated briefing schedule to address Hofbräuhaus America's Motion to Transfer  
7 and Consolidate.

8 Dated this 30th day of June 2022.

9 HONE LAW

10 /s/ Jamie L. Zimmerman  
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12 Jamie L. Zimmerman, NV Bar No. 11749  
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17 *Attorneys for Plaintiff*  
18 *Hofbräuhaus of America, LLC*

Dated this 30th day of June 2022.

SEMENTZA KIRCHER RICKARD

19 /s/ Jarrod L. Ricard  
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29 *Attorneys for Defendants*  
30 *William Guy Crouch, as Receiver for*  
31 *Oak Tree Management Services, Inc.*

32 IT IS SO ORDERED:

33   
34 Anne Daniel Rose  
35 UNITED STATES DISTRICT JUDGE

36 Dated: July 1, 2022

